PROPOSED RULE FOR ESTABLISHING POLLUTANT MINIMIZATION PLAN (PMP) REQUIREMENTS FOR POINT AND NON-POINT SOURCE DISCHARGERS FOLLOWING ISSUANCE OF A TMDL OR ASSIMILATIVE CAPACITY DETERMINATION

4.30.9 Pollutant Minimization Plans for Toxic Pollutants

A. Applicability. Following a determination of assimilative capacity by the Commission or the issuance of a TMDL by the U.S. Environmental Protection Agency or a Basin State for a toxic pollutant, the Commission may require, or in accordance with Section 4.30.9.A.2. below, may authorize the Executive Director to require, classes of point or non-point dischargers or individual dischargers to prepare pollutant minimization plans ("PMPs") to reduce or prevent releases of the toxic pollutant to Basin waters.

1. In accordance with Section 5.2 of the *Delaware River Basin Compact*, the Commission has determined that the effectuation of the Comprehensive Plan requires control and abatement of the pollutants listed below, through the PMP requirements set forth herein. Additional toxic pollutants may be added to this section by amendment of this rule.

   (a) Polychlorinated Biphenyls (PCBs).

2. The following classes of dischargers shall be subject to the requirements of this rule for the pollutants listed in Section 4.30.9.A.1. Additional classes of dischargers or individual dischargers may be added to this section by amendment of this rule. In addition, the Executive Director, upon approval by the Commission, is authorized to subject additional individual dischargers to this rule based upon a determination in each instance that the discharge has an adverse effect on the water resources of the Basin, subject to the right of the discharger to contest the determination under Article 6 of the *Rules of Practice and Procedure*.

   (a) For PCBs:
      (i) Dischargers listed in Group 1 of Tables 3-2 through 3-5 of Appendix 3 of the document, *U.S. Environmental Protection Agency Regions II and III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal Delaware River* (December 15, 2003).

      (ii) Dischargers listed in Group 2 of Tables 3-2 through 3-5 of Appendix 3 of the document, *U.S. Environmental Protection Agency Regions II and III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal Delaware River* (December 15, 2003), in the event that the presence of PCB congeners is confirmed through monitoring in

accordance with the requirements set forth in Appendix 3 of the same document.

B. Procedures for Submission, Review, Implementation and Continuation of PMPs. The following procedures shall apply to PMPs required under this rule:

1. Time of Submission. A discharger shall submit a PMP to the Commission and the permitting agency (if any) simultaneously within three months of publication of a final rule covering the discharger under Section 4.30.9.A.2. or Commission approval of a decision of the Executive Director to require a PMP, under the same section.. The Commission shall provide written notice of the rule change or decision to affected dischargers.

2. Completeness Determination. The Commission staff, in consultation with permitting agency staff (if applicable), shall review each PMP for completeness, and the Executive Director shall issue a completeness determination to the discharger, copied to the permitting agency, confirming that a PMP is complete or identifying deficiencies in the PMP. The completeness determination shall not be construed as a determination of the adequacy of the PMP to achieve the maximum practicable reduction of pollutant discharges to the air, soil or water in accordance with Section C.9.

3. Cure of Deficiency. Within 30 days of receipt of a completeness determination in accordance with Section 4.30.9.B.2., above, dischargers shall submit a PMP to the Commission and the permitting agency (if applicable) that reflects a good faith effort to cure any deficiency identified in the determination. If the revised PMP is satisfactory, the Executive Director shall issue a second determination of completeness stating that the deficiency has been cured. If the revised PMP is still incomplete, the Executive Director in her discretion may either grant the discharger additional time to cure the deficiency or seek penalties against the discharger, unless for cause shown the Executive Director grants a waiver in accordance with Section 4.30.9.E. The Executive Director may commence an enforcement action and/or seek penalties in accordance with Section 14.17 of the *Compact* and Section 4.30.9.B.9 below in the event of persistent or bad faith failure by the discharger to submit a complete PMP.

4. Commencement of PMP Implementation. The discharger shall commence implementation of its PMP as submitted, within 60 days of receipt of a determination of completeness under Section 4.30.9.B.2 or B.3.

5. Initial Term of PMP. Each PMP shall be designed for an initial term of five years.

6. Relationship to NPDES Permit. Upon issuance of a final new or renewed NPDES permit by the U.S. Environmental Protection Agency or a Basin State

after the imposition of a PMP requirement under this rule, the permit shall supersede any provisions of the PMP that relate to NPDES-permitted discharges. An NPDES permit modification shall supersede elements of a PMP relating to NPDES-permitted discharges only if the permit modification expressly so states.

7. Additional Term of PMP. For any discharge not controlled under the NPDES permit program, the term of the PMP shall be reviewed by the Commission staff in consultation with the state environmental agency staff, and an additional term shall be determined by the Executive Director.

8. Plans Deemed Non-Compliant. If the Commission determines at any time, upon the recommendation of the Executive Director, that a PMP developed under this rule is not likely to achieve the maximum practicable reduction of pollutant discharges to the air, soil and water, then the Commission may require a revised PMP to be submitted to more aggressively reduce pollutant loading. The discharger shall submit a revised PMP responsive to the Commission's request within 60 days of receipt of the request. The provisions of Sections 4.30.9.B.2 through B.4., with respect to curing a deficiency and commencing implementation, shall apply.

9. Persistent or Bad Faith Failure to Comply. The Executive Director is authorized to commence an enforcement action against a discharger in accordance with Article 7 of the Commission's *Rules of Practice and Procedure* for persistent or bad faith failure to submit a complete plan, to modify a plan deemed non-compliant, or to implement a plan.

C. Plan Elements. A PMP prepared in accordance with these regulations shall contain the following elements:

1. Good Faith Commitment. A signed and dated statement by the highest ranking official having day-to-day managerial and operational responsibilities for the facility, expressing the company's good faith commitment to reducing discharges of the target pollutant through the PMP process.

2. Discharger Contact. Name and contact information for an individual who will serve as the Commission's contact for information concerning the PMP.

3. Description and Maps of Facility

   a. For Industrial Facilities:
      - company and facility name and address;
      - raw materials and industrial processes used, and products generate;
      - for facilities accepting non-facility wastes, a description of all such wastes;

- map of all point and nonpoint source discharges from the facility or site and description of the nature of such discharges (i.e., continuous or intermittent, to surface water or groundwater, flow rate);
- all applicable local, state and federal discharge permits and permit numbers for permits that control the pollutant or relate to discharges that contain the pollutant; and
- receiving stream for all discharges, including River Mile in instances where the receiving stream is the main stem Delaware River.

b. For Municipal Wastewater Treatment Plants (WWTPs):
- facility name and address;
- description and map of the facility's service area;
- description and map or schematic diagram of the collection system;
- description of any wastes accepted from outside the collection system (e.g., wastes trucked or transported by rail to the site for treatment);
- map of all point and nonpoint source discharges from the facility or site and description of the nature of such discharges (i.e., continuous or intermittent, to surface or groundwater, flow rate);
- all local, state and federal permits and permit numbers for permits that control the pollutant or relate to discharges that contain the pollutant;
- receiving stream for all discharges, including River Mile in instances where the receiving stream is the main stem Delaware River; and
- a list of all industrial users of the collection system and pretreatment permit numbers if any.

4. <u>Description and Map of Known Sources</u>

a. Description of all materials, equipment, processes, soil areas or facilities within a facility, site, or service area, from which the pollutant is released directly or indirectly into a wastewater treatment system, sewage collection system, stormwater collection system, stream or river, including a description of the pathways if known.

b. Site map or service area map showing location of known sources and pathways.

5. List of Materials, Equipment, Processes, Soil Areas or Facilities Containing or Generating the Pollutant, but Which are Not Known Sources

   a. For industrial dischargers, to the extent practicable, identify any material, equipment, process, soil area or facility on the site known to contain or generate the pollutant, but that is not deemed a source because it is not known to be releasing the pollutant or because no known pathway to surface water or groundwater exists. Identify pollutant concentration if known.

   b. For municipal WWTPs, identify any material, equipment, process, soil area or facility that is part of the collection system or that is within the service area and that is known to contain the pollutant but that is not deemed a source because it is not known to be releasing the pollutant or because no known pathway to surface water or groundwater exists. Identify pollutant concentration if known.

6. Strategy for Identifying Unknown Sources of the Pollutant (Trackdown)

   a. For industrial dischargers, the strategy for identifying pollutant sources may include, without limitation, investigation of an industrial process used by the discharger that is similar to one known to have generated the pollutant elsewhere; investigation of historic activities on the site; or investigation of possible soil or sediment contamination or stormwater management system contamination as a result of historic or ongoing activities.

   b. For municipal WWTPs, trackdown strategy may include, without limitation, identification, through screening, of portions of the collection system containing higher concentrations or volumes of the pollutant; identification of industrial users of the collection system that are likely to have used or generated the pollutant in the past; industrial processes known to be in use that could generate the pollutant; sites containing equipment that is likely contaminated with the pollutant, sites that have been used to dispose of the pollutant, etc.

   c. Trackdown efforts may rely upon analytical methods other than those required under Section 4.30.9.C.13, below, for purposes of screening or identification of pollutant sources.

7. Previous, Ongoing or Planned Minimization Activities Undertaken Voluntarily or Required by Other Regulatory Programs. Previous, ongoing or planned pollutant minimization activities under way or to be undertaken voluntarily or in accordance with a federal or state requirement for the pollutant that is the subject of the PMP, including the level of clean-up

attained, level of clean-up targeted, measures completed, measures under way, and the schedule for planned activities.

8. For Municipal WWTPs Only, Recommendations for Action Under Other Regulatory Programs. Based on information known at the time of PMP submission or identified during implementation of the PMP, recommendations for remediation activities to be undertaken under the auspices of other agencies or regulatory programs.

9. Pollutant Minimization Measures. A description of measures to be taken to achieve the maximum practicable reduction of discharges to the air, soil or water. For known or potential sources, such measures may include but are not limited to: source removal, changes in raw materials, industrial process modifications, treatment modifications, and elimination of pathways to surface and groundwater.

10. Ranking. Ranking of known and potential sources, either individually or in categories, from most to least significant, on the basis of available information. Factors to be considered in ranking known sources should include, without limitation, available information on volume of the discharge, concentration of the pollutant, and likelihood of release into Basin waters. Factors to be considered in ranking potential sources may include, without limitation, type of current or past industrial activity, presence and type of PCB containing equipment, waste management activities and overall condition of the site and facilities.

11. Key Dates. Date of submission of waste implementation plan; date by which initiation of plan activities is required (i.e., receipt of completeness determination plus 60 days); and schedule for implementation of each of the measures described in Section 4.30.9.C.9. above.

12. Measurement of Progress. Description of the procedures to be used to measure, demonstrate and report progress in reducing potential and actual discharges of the pollutant. These procedures shall include at a minimum the following:
    - establishing a loading baseline, utilizing methods listed in Section 4.30.9.C.13. below, if applicable;
    - annual sampling and analysis of discharges, utilizing methods listed in Section 4.30.9.C.13 below, if applicable

    No PMP shall be deemed complete that does not demonstrate that a loading baseline has been or will be established and that changes to mass loadings shall be measured on an annual basis. However, additional measures of progress may be used, including, but not limited to, lists of PCB-containing equipment removed or pathways blocked, or in the case of municipal WWTPs, inventories of PCB-containing equipment initiated or completed;

educational programs put in place; areas of the collection system targeted through trackdown; etc.

13. Sampling and Analytical Methods. The following sampling and analytical methods shall be used for establishing baseline discharges and for measuring pollutant reductions on an annual basis, unless this requirement is waived by the Executive Director in accordance with Section 4.30.9.E., below.

    (a) PCBs – EPA Method 1668, Revision A.

14. Material Modifications. Within three months of any material modification to a facility's operations, site boundary, service area, or waste streams, the owner or operator must notify the Commission and make appropriate revisions to its PMP.

D. Annual Report. Each year, commencing one year from the date by which initiation of PMP activities is required to begin in accordance with Section 4.30.9.B.4 above, and continuing through the fifth year of the plan, the discharger shall submit to the Commission and the permitting agency (if any) an annual report:

1. demonstrating annual and cumulative changes from the pollutant loading baseline since initiation of the PMP; and

2. describing measures under way and completed to reduce loadings since initiation of the PMP.

E. Waiver. The Executive Director may waive any of the requirements set forth in Section 4.30.9., upon a showing that they are inapplicable to or inappropriate for a particular facility or site.

F. Guidance. The Commission may develop guidance consistent with the requirements set forth in Section 4.30.9.B and C. to assist the agencies and dischargers in the development of PMPs under this rule.

G. Nothing in this rule shall limit the authority of the Commission or the Executive Director under the *Compact* to control future pollution, abate existing pollution or require review under Section 3.8 of the *Compact*.